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Conference

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 IN RE PETITION OF DUHAMEL
4 BROADCASTING ENTERPRISES, ET
AL.

5 -----x

6 Related to

7 UNITED STATES OF AMERICA

8 Plaintiff,

9 v.

11 CV 9311 (DLC) (MHD)

10 AMERICAN SOCIETY OF COMPOSERS,
11 AUTHORS, AND PUBLISHERS,

12 Defendant.

13 -----x

14 New York, N.Y.
August 9, 2012
10:11 a.m.

15 Before:

16 HON. DENISE COTE,

17 District Judge

18 APPEARANCES

19 WEIL GOTSHAL & MANGES
Attorneys for Duhamel Broadcasting Enterprises
20 BY: BENJAMIN MARKS

21 PAUL WEISS RIFKIND WHARTON & GARRISON
Attorneys for Defendant ASCAP
22 BY: JAY COHEN
-AND-

23 ASCAP
24 BY: RICHARD H. REIMER
25

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1 (In open court)

2 (Case called)

3 THE DEPUTY CLERK: Counsel for Duhamel Broadcasting,
4 please state your name for the record.

5 MR. MARKS: Benjamin Marks from Weil Gotshal & Manges,
6 your Honor.

7 THE DEPUTY CLERK: And for ASCAP?

8 MR. COHEN: Jay Cohen from Paul Weiss for ASCAP.

9 THE DEPUTY CLERK: Thank you.

10 MR. REIMER: And Richard Reimer for ASCAP.

11 THE COURT: You may be seated.

12 Welcome, everyone, and congratulations on your
13 settlement.

14 I believe I've awaiting Exhibit 3. Has that been
15 provided to me before I can sign the final proposed order?

16 MR. COHEN: Your Honor, I think there was a second
17 submission to you on the 31st of July that provided Exhibit 3.
18 It substituted -- there was the initial submission by Mr. Marks
19 on the 27th, and then we superseded that on the 31st with
20 Exhibit 3 attached.

21 MR. MARKS: I have an extra copy of it, if that would
22 be helpful to your Honor.

23 THE COURT: I have found the copy of the proposed
24 final order with Exhibit 3. Thank you.

25 So let me ask just a few questions.

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1 I had reviewed the proposed agreement and order for my
2 signature without Exhibit 3. I now see that I have Exhibit 3
3 attached.

4 Let me make sure I understand some of the components
5 of this settlement.

6 The three-page order contemplates that the Court will
7 retain continuing jurisdiction over this proceeding, as I
8 expect it must under the ASCAP judgment. And then in various
9 parts of the exhibits, Exhibit A in Paragraphs 8 and 11, and
10 Exhibit B in Paragraph 10, it's contemplated that if there are
11 disputes that need the assistance of the Court, the parties
12 will use, if he is available, Judge Dolinger to help them
13 hopefully reach agreement and negotiate their disagreements and
14 hopefully obviate the need to make a further application to
15 this Court should such disputes arise.

16 Do I understand what the parties intended?

17 MR. COHEN: Yes, your Honor.

18 MR. MARKS: Yes.

19 MR. COHEN: Your Honor, would it be helpful to maybe
20 give you 30 seconds of context about this, or you just want
21 to -- have specific questions?

22 THE COURT: Mr. Cohen, I'd love 30 seconds of context.

23 MR. COHEN: I think the 30 seconds of context is that
24 this is largely a continuation of the existing licensing
25 structure. There's been an adjustment to the blanket fees.

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1 There has been an adjustment to the per program multiplier
2 reflecting what the parties believe is a higher share of ASCAP
3 music than there has been in a prior period.

4 So the program multiplier has declined from 155
5 percent of the blanket fee to 145 percent. And there is an
6 agreement of the parties that once the Second Circuit ruled in
7 the DMX case, which it now has, if the carve-out license was
8 sustained, which it has been, the parties would attempt to
9 negotiate the terms of the carve-out license beginning in 2015.
10 But much of the rest of the license, other than that, simply
11 carries forward the prior agreement.

12 MR. MARKS: I would just add two small points of
13 clarification.

14 One is that the apples-to-apples comparison program on
15 the per program multiplier would be 1.62 to 1.45 because of an
16 administrative fee component that was separate in the last
17 license and is included in this one.

18 And the only other adjustment that I would mention is
19 that there has been an adjustment to the scope of the grant of
20 rights to reflect some of the newer ways that television
21 stations are reaching their audiences. But, otherwise, I agree
22 with Mr. Cohen's statement.

23 THE COURT: Television stations?

24 MR. MARKS: The broadcasters.

25 THE COURT: Well, again, I want to congratulate

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1 counsel on working together to try to achieve a result that
2 worked for both sides and avoided further litigation.

3 I had reviewed the document. I'll take the complete
4 order, the one that has Exhibit 3, and sign that document.

5 MR. COHEN: Your Honor, I think we probably should
6 give an assist to Magistrate Judge Dolinger, who engaged in
7 some shuttled diplomacy in the end. I think the parties were
8 working hard together, but it was very helpful.

9 THE COURT: Well, he is a magnificent judicial
10 officer. But beyond that, he brings, of course, an enormous
11 wealth of experience to these matters.

12 And I will convey, as I have in the past, my personal
13 thanks to him and recite how the parties together praised him
14 in court in appearance before me today.

15 MR. MARKS: We certainly agree with that sentiment,
16 your Honor.

17 THE COURT: Thank you.

18 So the final order has been signed by me. And we'll
19 take steps to get it appropriately docketed.

20 Thank you.

21 MR. MARKS: Thank you, your Honor.

22 MR. COHEN: Thank you, your Honor.

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